

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

UNITED STATES OF AMERICA,

Plaintiff,

2:99-cr-387-LRH

v.

ORDER

ANTHONY FRANK VITO,

Defendant.

Before the court is petitioner Anthony Vito’s motion to seal records. ECF No. 27¹. The United States filed a response (ECF No. 30), but Vito failed to reply. The court will deny this motion because the Ninth Circuit Court of Appeals has expressly held that U.S. District Courts lack jurisdiction to expunge (i.e., seal) a record of conviction based solely on equitable considerations such as improved employment opportunities.

I. Background

In 2000, Vito pled guilty to one count of conspiracy to commit an offense against the United States under 18 U.S.C. § 371. ECF No. 27 at 4. This conviction stemmed from a scheme in which Vito falsely reported his vehicle stolen, when in reality he had given the vehicle to members of organized crime in order to profit from the insurance proceeds. *Id.* at 6. Another court within this district sentenced Vito to three years of probation, along with community service and restitution, all of which he successfully completed.

Vito now moves for this court to seal his record of conviction in this matter, attesting that his conviction prevents him from working in the casino industry, where he previously worked for

¹ This citation refers to the court’s docket number.

1 over 20 years. ECF No. 27-1 at 1. He also more generally asserts that he seeks this relief so that
2 he “will no longer be plagued with a felony on [his] record.” *Id.* at 2.

3 **II. Discussion**

4 At the onset, the court notes that, based on the parties’ briefings, there appears to be
5 confusion as to what relief Vito is seeking. His petition solely refers to Nevada’s statutory
6 scheme for “sealing” a record of conviction. *See Nev. Rev. Stat. § 179.245* (“Except as otherwise
7 provided . . . a person may petition the court in which the person was convicted for the sealing of
8 all records relating to a conviction”); *see also id.* § 179.275, .285. These statutes are
9 inapplicable to the instant case, as Vito was convicted of a federal crime before a federal court.
10 Conversely, the United States responds in opposition by citing the standard for filing a document
11 under seal. *See ECF No. 30 at 1* (citing *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172
12 (9th Cir. 2006)). Nonetheless, the United States also asserts that Vito “mistakes the idea of
13 sealing a record perhaps with that of expunging it” *Id.* at 2.

14 This confusion is understandable, as the term “seal” has more than one legal application
15 and varies in use across jurisdictions. State and federal jurisdictions use the term in the context of
16 filing documents in an active case “under seal” (i.e., making these documents inaccessible to the
17 public). *See Kamakana*, 447 F.3d at 1176. However, the Nevada statutes that Vito’s petition
18 references appear to also use the term in a manner that is synonymous with what federal courts
19 refer to as “expungement,” which is a request for a court to “destroy or seal the records of the
20 fact of the defendant’s conviction” *United States v. Crowell*, 374 F.3d 790, 792 (9th Cir.
21 2004). The court will therefore interpret the petition as a motion to expunge his record of
22 conviction.

23 However, the court lacks jurisdiction to address this motion and must therefore deny it. In
24 *United States v. Sumner*, the Ninth Circuit joined many of its sister circuits in holding that,
25 although federal courts do “possess ancillary jurisdiction to expunge criminal records[.]” that
26 “jurisdiction is limited to expunging the record of an unlawful arrest or conviction, or to
27 correcting a clerical error.” 226 F.3d 1005, 1014 (9th Cir. 2000). The court specifically held that
28 this authority does *not* extend to expunging “a record of a valid arrest and conviction solely for

1 equitable considerations. . . . such as to reward a defendant's rehabilitation and commendable
2 post-conviction conduct" or "to enhance a defendant's employment opportunities." *Id.* This
3 conclusion stems from the principle that federal courts are courts of limited jurisdiction, and
4 thus, in order "to have subject matter jurisdiction to hear an independent action[,] there must be
5 some statutory or constitutional basis for [such] jurisdiction." *Id.* at 1010 (quoting *In re Hunter*,
6 66 F.3d 1002, 1005 (9th Cir. 1995)).

7 No such basis exists in this case, where Vito, like the petitioner in *Sumner*, is requesting
8 relief based solely on the equitable considerations of his post-conviction conduct and the
9 employment consequences of a felony conviction. *See United States v. Brooks-Hamilton*, No. 05-
10 CR-00631-SI-1, 2015 WL 5680907 (N.D. Cal. Sept. 28, 2015) (arriving at the same conclusion
11 in a similar motion to expunge a record of conviction). The court commends Vito on becoming a
12 licensed real-estate agent after his conviction and for being active in volunteer work with his
13 church, but the court lacks the authority to grant him his requested relief. His motion will
14 therefore be denied.

15 **III. Conclusion**

16 IT IS THEREFORE ORDERED that petitioner Anthony Vito's motion to seal records
17 (ECF No. 27) is **DENIED**.

18 IT IS SO ORDERED.

19
20 DATED this 11th day of April, 2017.

21 
22 LARRY R. HICKS
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28